



February 2019

Google's observations on the future of competition policy in relation to online platforms

- 1 Google welcomes the opportunity given by the Ministry of Economic Affairs and Climate (“EZK”) to provide its views on the questions and ideas put forward in EZK’s discussion paper on the future of competition policy in relation to online platforms (the “Paper”). EZK assesses in the Paper (I) characteristics of competition in the digital economy and (II) potential challenges for competition law and regulators in that connection.

(I) Characteristics of competition in the digital economy

- 2 The Paper observes that online markets are more concentrated than traditional markets, which is, according to EZK, a consequence of network effects, data advantages, and economies of scale. As a preliminary point, Google notes that whether the online industry is more or less concentrated than traditional markets, requires proper market definitions and clarity on which markets are being compared and why.¹
 - o **Network effects.** Google agrees conceptually that direct and indirect network effects can play a role in the user’s decision for a product. However, it is important to have a nuanced understanding of where network effects are actually at play. Network effects are demand-side economies of scale -- in the case of social networks or communication tools for example, the value a user derives from the product is in part a function of how many other users are also on the platform (a case of direct network effects). But network effects cannot be said to be uniformly present across the digital space. With respect to search engines for example, users do not directly care about whether the search engine serves few or many other users. There are some supply-side economies of scale in search, as is the case in many other economic activities. But this should not be confused with a network effect. A more relevant economic concept for search is that of “learning by doing”, championed by economist and Nobel Laureate Kenneth Arrow.²
 - o **Data advantages.** Google agrees with EZK that data analysis can be helpful to improve the offerings of online platforms. However, it’s Google’s experience that data are non-rival, ubiquitous and inexpensive to collect. In addition, data have little inherent value, but they can become useful after analysis. Google also observes that data is

¹ See e.g., <http://bruegel.org/events/empirical-trends-in-markups-and-market-power-their-implications-for-productivity-and-growth/>

² See e.g., <https://googleblog.blogspot.com/2008/02/our-secret-sauce.html>



subject to diminishing marginal returns (in that the last data point collected is less useful than the first data point collected).

- **Economies of scale.** While Google understands that large investments could constitute a barrier to entry for some companies, it also observes that the costs of entry have lowered substantially exactly because of the existence of online platforms. For example, online platforms have invested substantially in cloud computing and open-source software (including artificial intelligence tools) which has made it easy and cheap for companies to enter.

3 The Paper also considers whether it is likely that, because of the dynamics of online platforms, durable dominant positions will be developed. Google observes with EZK that various differentiated platforms can be successful at the same time. Because of the inherent flexibility of online tech companies, firms are moving into one another's areas of expertise. Because of this, there is a significant level of static competition among online tech companies. For instance, Microsoft has a core competence in operating systems. However, Apple, Amazon and Google also offer operating systems. The below table shows how large digital companies compete with each other today for various different products:

Product	AMZN	AAPL	GOOG	FB	MSFT
advertising platforms	✓		✓	✓	✓
artificial intelligence	✓	✓	✓	✓	✓
browsers	✓	✓	✓		✓
cloud services	✓		✓		✓
digital assistants	✓	✓	✓	✓	✓
ebooks	✓	✓	✓		
email and messaging		✓	✓	✓	✓
games	✓	✓	✓	✓	✓
general purpose search engines			✓		✓
home delivery services	✓		✓		
maps		✓	✓		✓
office tools		✓	✓		✓
operating systems	✓	✓	✓		✓
smartphones	✓	✓	✓		✓
special purpose search engines	✓	✓	✓	✓	✓
streaming video	✓		✓	✓	
video and music distribution	✓	✓	✓		
video conferencing		✓	✓	✓	✓

4 As EZK confirms, there can still be dynamic competitive pressure, when there is the threat of new, innovative products entering the market. While each online tech company has its historical focus, each of these companies compete intensely with others outside these core areas. This competition keeps these firms on their toes. Even if they continue



to be the main player in their core area, that is not a sign of lack of competition: it's often a sign that they continue to invest and innovate, in the knowledge that if they relax even briefly, they will be pushed out.

- 5 The existence and level of both dynamic and static competition make it is unlikely that durable dominant positions will be developed. Indeed, the industry is highly contestable, for the following reasons:
 - **Low switching costs.** The cost of switching involves merely typing a new web address, opening a new app, or clicking on a browser bookmark.
 - **Decreasing entry costs.** The entry costs for new players in online industries are decreasing, for example as a result of the intense competition between players that offer cloud systems.
 - **Intense innovation.** The level and frequency of product innovations show how competitive the online platforms are.
- 6 Google observes that competition in online industries in the Netherlands seems generally healthy. Digital services can typically be provided by a range of actual and potential competitors, and competition between existing online platforms is intensifying. Also, the digital economy is characterized by the provision of free services that enhance consumer welfare. Online platforms are, quite literally, structures on which other players can build.

(II) Potential challenges for competition law and regulators

- 7 In its Paper, EZK lists several challenges that competition law faces, such as durable market power³, algorithms enabling cartels, data driven mergers and new kinds of market power abuse. EZK concludes that the principles of competition law are sufficiently flexible to be applicable to these new developments as well. Indeed, the challenges competition law is facing do not require a fundamental rethink, but might rather require adjustments to existing competition law tools or a more extensive use of existing tools. Google agrees with that analysis and supports EZK's view that regulators should continue to invest in developing their knowledge and expertise about new technologies. Google believes that Jean Tirole's notion of "participative antitrust" encapsulates well the ways in which regulators and industry can work together to develop existing tools for new technologies and circumstances.⁴
 - **Algorithmic cartels.** Google agrees with EZK's analysis that, in this area, it is especially important that regulators clarify the liabilities for firms for autonomously operating

³ See paras. 3-5.

⁴ See e.g.,

<https://qz.com/1310266/nobel-winning-economist-jean-tirole-on-how-to-regulate-tech-monopolies/>



algorithms. Google believes with EZK that introducing ex-ante rules for algorithms might make it more difficult to use algorithmic tools across a range of industries (for example banking and insurance).

- **Abuse of dominance.** Google agrees with EZK that the current tools and competences of regulators are sufficient to address potential new types of abusive behaviour. Google notes that any intervention should focus on the fundamental objectives of competition law: the protection of competition and the enhancement of consumer welfare. As EZK rightly points out, different policy objectives, such as privacy protection, are better addressed with dedicated rules and regulations. For example, the introduction of the General Data Protection Regulation addresses data portability questions that have been raised in various competition forums.
- **Merger control.** EZK observes that merger control is becoming more complex, in part because it's challenging for regulators to accurately assess the role of data in mergers. As a preliminary point, Google would support an initiative to review past mergers to verify the likelihood that the counterfactual would have been better for consumers. Google notes that the introduction of notification requirements based on the transaction value of a merger might in principle incur additional costs for the merging parties and regulators alike, as more transactions might become reviewable. Having said that, Google understands that this could represent a worthwhile policy trade-off; as a company Google is confident that the mergers it engages in are pro-competitive and would always welcome the opportunity of making this case. Turning to the substantive analysis of mergers, EZK suggests that regulators can develop more expertise to assess the effects of mergers on non-price parameters, such as privacy or other qualitative characteristics. Google agrees and confirms that it competes vigorously on privacy settings with its competitors.

8 The Paper considers the need, upsides and downsides of additional ex-ante regulation. Google believes with EZK that ex-ante regulation that's only aimed at larger firms risks distorting markets, and may affect incentives to innovate and invest. EZK distinguishes a number of options:

- **Neutral ranking and/or access conditions.** One suggestion in the Paper is that specific (groups of) platforms would be required to be neutral in their rankings and/or access conditions to their platforms. The essential facilities case-law provides firms with a possibility to gain access to facilities owned by others. Since mandated access involves infringing the owner's freedom of contract, competition rules require proof of indispensability, inter alia. An argument for lower standards would need to demonstrate competitive harms that the essential facilities doctrine had failed to address. Competition rules prohibiting discrimination provide a sound basis for addressing so-called "neutrality" concerns. Technical expertise may, however, need to be developed --



perhaps in conjunction with industry experts -- to identify instances of different treatment of similarly situated firms operating in new technology markets.

- **Data sharing and portability.** As EZK rightly notes, data isn't necessarily the basis for how competition online functions. Google agrees that in principle data sharing with competitors is only appropriate if the requirements of the essential facilities case-law are met. However, Google empowers its users with tools and knowledge to handle their own data. For example, users can export and download their data,⁵ and delete their searches and other activities.⁶ In addition, Google initiated the Data Transfer Project, an open source initiative dedicated to developing tools that will enable consumers to transfer their data directly from one service provider to another, without needing to download and re-upload it.
 - **Interoperability.** EZK suggests that interoperability requirements with third party operators of similar services can avoid that users get locked into one particular ecosystem. As noted in the preceding item, Google provides its users with, for example, Google Takeout which allows users to port their data, including search history, emails, photos and contacts in widely used formats that can easily allow transfer to rival services. Google also enables advertisers to port Google campaigns to rival services.
 - **Intervening in market structure.** Google agrees with EZK that any intervention in the market structure of online platforms would have significant downsides. Indeed, splitting up a platform is a dramatic measure that would generally be disproportionate in solving any competition concerns but would cause an immediate and irreversible loss of efficiencies. A divestiture of business units would lead to a significant loss in consumer welfare as a result of the loss of interoperability between the different services offered by a platform.
- 9 Finally, Google believes that large companies should not, simply by virtue of being active in an innovative sector, benefit from an assumption of being net value creators. And where there is evidence of anticompetitive conduct, regulators should have access to all competition law remedies, including mandated access or structural changes. However, the analysis of technology markets is complex and often involves concepts such as network effects, multi-sided platforms, potential competition, and privacy as a measure of quality. These concepts are not well understood. Investments by regulators to understand and by the industry to explain these kinds of concepts and their real-life applications ought to be a priority and the first step towards a model of participative antitrust. This will provide a sound basis for effectively adapting antitrust tools and processes for high tech markets.

⁵ <https://support.google.com/accounts/answer/3024190?hl=en>

⁶ <https://support.google.com/websearch/answer/465>